

1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE DISTRICT OF PUERTO RICO**

3 Daniel Rosario-González

4 Plaintiffs

5 v.

CIVIL NO. 08-2213 (GAG)

6 Servicios de Salud en el Hogar y
7 Hospicio San Lucas, Inc.

8 Defendant

9
10 **ORDER**

11 The court hereby adopts Magistrate-Judge Vélez-Rivé's Report and Recommendation (Dkt.
12 107). The Veteran's Administration cannot be sued before this court at this time, given that
13 plaintiff's administrative claims are presently pending before the federal agency. Plaintiff himself
14 acknowledges in his opposition to the Report and Recommendation (Dkt. 108) that he is not
15 bringing any claims against the Veterans Administration, but rather, only against Hospital San
16 Lucas. ¶¶ 19, 20.

17 Diversity of jurisdiction does not exist in this case between plaintiff and Hospital San Lucas.
18 Plaintiff, however, again characterizes his cause of action, as one arising under the Constitution and
19 laws of the United States. Notwithstanding, his own allegations belie this. For example, in his
20 Objection (Dkt. 108 ¶¶ 11-16), plaintiff characterizes Hospital San Lucas' lack of medical care as
21 negligent and intentional. This unmistakably sounds in tort. More so, a plaintiff cannot convert a
22 state-law tort cause of action into a federal civil/rights action by simply labeling it as such.

23 Accordingly, this Court hereby DISMISSES this action without prejudice. Plaintiff is free
24 to file his claim against Hospital San Lucas in the Commonwealth Court of First Instance. Also,
25 plaintiff's Federal Tort Claims Act claims may be filed in this court once the same are
26 administratively disposed by the Veterans Administration. Upon a proper basis for federal
27 jurisdiction, plaintiff may re-assert his claims against Hospital San Lucas as supplemental claims
before this court.

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2 Plaintiff is highly encouraged to retain an attorney — given that prosecution of this case
3 involves technical procedural matters, and statute of limitations and jurisdictional issues as well.

4 **SO ORDERED.**

5 In San Juan, Puerto Rico this 22nd day of April, 2009.

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7 *S/Gustavo A. Gelpí*

8 GUSTAVO A. GELPI
9 United States District Judge
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